

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219988.4

DATE: November 4, 1985

MATTER OF: Galveston Houston Company

DIGEST:

Recovery of proposal preparation costs and the costs of pursuing a protest is inappropriate where the remedy afforded the protester is the opportunity to compete in the procurement.

Galveston Houston Company (Galveston) has submitted a claim for proposal preparation costs and the costs of pursuing its protest, including attorney's fees, following our September 20, 1985, dismissal of its protest. The firm had protested the award of a contract for the construction of four vessels to Norfolk Shipbuilding and Drydock Corp. (Norfolk) under request for proposals (RFP) No. DAAJ10-85-R-A003, issued by the Army Materiel Command (AMC). We dismissed Galveston's protest as academic after AMC notified us that it had terminated Norfolk's contract and would recompute the requirement.

We deny Galveston's claim for proposal preparation costs and for the costs of pursuing the protest, including attorney's fees.

Galveston claims that under the provisions of the Competition in Contracting Act of 1984, it is entitled to proposal preparation costs and the costs of pursuing its protest. The basis for Galveston's claim is that AMC acted arbitrarily by disqualifying the firm for failing to meet a vessel construction requirement that was not stated in the RFP. Galveston maintains that the fact that AMC terminated Norfolk's contract following the filing of the firm's protest here establishes that the agency knew it acted arbitrarily. The firm concludes that since AMC was aware that it failed to follow federal procurement regulations in

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awarding the contract, it should not be permitted "to escape liability" for its actions by terminating the protested contract without paying such costs.

The Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3554 (West Supp. 1985), and our Bid Protest Regulations, 4 C.F.R. § 21.6 (1985), provide authority for our Office to grant proposal preparation costs and the costs of pursuing a protest. We will, however, only allow the recovery of proposal preparation costs where the contracting agency has unreasonably excluded the protester from the competition and no other remedy enumerated in sections 21.6(a)(2-5) of our Bid Protest Regulations is appropriate. 4 C.F.R. § 21.6(e). Two of the remedies enumerated include terminating the protested contract and recompeting the requirement, which AMC has decided to do here. See 4 C.F.R. § 21.6(a). Therefore, the recovery of proposal preparation costs is inappropriate. See Federal Properties of R.I., Inc., B-218192.2, May 7, 1985, 85-1 C.P.D. ¶ 508.

Further, our Regulations limit the recovery of the costs of filing and pursuing a protest to situations where the protester is unreasonably excluded from the procurement, except where this Office recommends that the contract be awarded to the protester and the protester receives the award. 4 C.F.R. § 21.6(e). We have construed this to mean that where, as here, the protester is given the opportunity to compete for the award, recovery of the costs of filing and pursuing the protest is inappropriate. See Federal Properties of R.I., Inc., B-218192.2, *supra*; The Hamilton Tool Company, B-218260.4, Aug. 6, 1985, 85-2 C.P.D. ¶ 132. We therefore also deny the protester's request for the reimbursement of such costs.

Harry R. Van Cleve

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General Counsel